

Department of the Navy, DoD

§ 752.5

Judge Advocate General (Admiralty and Maritime Law).

(b) *Settlement is final.* The legislation specifically authorizes the Secretary to settle, compromise, and pay claims. The settlement, upon acceptance of payment by the claimant, is final and conclusive for all purposes.

(c) *Settlement procedures.* Where the amount paid is over \$500,000, after agreement is reached with counsel or claimants, the procedure is to prepare a settlement recommendation for the approval of the Secretary of the Navy. When settlement has been approved, the voucher required for effecting payment is prepared. The settlement check is then exchanged, in keeping with the commercial practice, for an executed release. In some situations, where the exchange of documents is impracticable, a claimant is requested to forward the executed release by mail, on the understanding that the release does not become effective until the check is received in payment. Claims settled under 10 U.S.C. 7622 are paid out of annual Department of Defense appropriations.

(d) *Limitation period.* The Secretary's settlement authorization is subject to a two-year limitation. This limitation is not extended by the filing of claim nor by negotiations or correspondence. A settlement agreement must be reached before the end of the two-year period. If settlement is not accomplished, then the claimant must file suit under the appropriate statute to avoid the limitation bar. The agreement reached in negotiations must receive the approval of the Secretary of the Navy or his designee, depending on the amount involved, prior to the expiration of the two-year period.

(e) *Matters in litigation.* When suit is filed, the matter comes within the cognizance of the Department of Justice, and the Secretary of the Navy is no longer able to entertain a claim or to make administrative settlement.

[39 FR 9962, Mar. 15, 1974, as amended at 55 FR 12173, Apr. 2, 1990; 65 FR 60861, 60862, Oct. 13, 2000; 69 FR 20542, Apr. 16, 2004; 72 FR 56268, Oct. 3, 2007]

§ 752.4 Affirmative claims.

(a) *Settlement authority.* The Navy has the same authority to settle affirma-

tive admiralty claims as it does claims against the Navy. The statute conferring this authorization is codified in 10 U.S.C. 7623, and is the reciprocal of 10 U.S.C. 7622 referred to in § 752.3.

(b) *Scope.* 10 U.S.C. 7623 is a tort claims-settlement statute. It is not limited to affirmative claims arising out of collision, but embraces all instances of damage caused by a vessel or floating object to property of the United States under the jurisdiction of the Department of the Navy or for which the Department of the Navy has assumed an obligation to respond. Perhaps the most frequent instance is where a privately owned vessel damages a Navy pier or shore structure. To eliminate any issue of whether the damaging instrumentality was a vessel, the words "or floating object" were included.

(c) *Statute of limitation.* The United States is subject to a three-year statute of limitation when it asserts an affirmative claim for money damages grounded in tort. This limitation is subject to the usual exclusions, such as inability to prosecute due to war, unavailability of the "res" or defendant, and certain exemptions from legal process (28 U.S.C. 2415, 2416).

(d) *Litigation.* 10 U.S.C. 7623 does not apply to any claim where suit is filed. If the Admiralty and Maritime Law Division is unable to effect settlement, the matter is referred to the Department of Justice for the filing of a complaint against the offending party. Thereafter, as in the case of adverse litigated claims, the Navy has no further authority to effect settlement.

[39 FR 9962, Mar. 15, 1974, as amended at 55 FR 12174, Apr. 2, 1990; 65 FR 60861, Oct. 13, 2000; 69 FR 20542, Apr. 16, 2004; 72 FR 56268, Oct. 3, 2007]

§ 752.5 Salvage.

(a) *Scope.* This section relates to salvage claims against or by the Navy for compensation for towage and salvage services, including contract salvage, rendered to a vessel in the naval service or to other property under the jurisdiction of the Department of the Navy, or for salvage services rendered by the Department of the Navy. Suits for salvage may be maintained under the Public Vessels Act, and salvage

claims are within the Secretary of the Navy's administrative-settlement authority under 10 U.S.C. 7622. Salvage claims against the Navy are reported to and processed by the Judge Advocate General (Admiralty and Maritime Law Division). Both claims and suits for salvage against the United States are subject to the two-year limitation of the Public Vessels Act and the Navy's settlement authority.

(b) *Affirmative claims.* Authorization for the settlement of affirmative salvage claims is contained in 10 U.S.C. 7365. Assertion of such claims is handled in the first instance by the Assistant Supervisor of Salvage (Admiralty), USN, Naval Sea Systems Command (SEA OOCL), 2531 Jefferson Davis Highway, NC/3 Room 11E54, Arlington, VA 22242-5160. Salvage claims are referred to the Admiralty Division only if the Assistant Supervisor of Salvage (Admiralty) is unsuccessful in making collection. Any money received in settlement of affirmative salvage claims is credited to appropriations for maintaining salvage facilities by the Navy, pursuant to 10 U.S.C. 7367.

[39 FR 9962, Mar. 15, 1974, as amended at 41 FR 26866, June 30, 1976; 55 FR 12174, Apr. 2, 1990; 65 FR 60861, 60862, Oct. 13, 2000; 69 FR 20542, Apr. 16, 2004]

PART 755—CLAIMS FOR INJURIES TO PROPERTY UNDER ARTICLE 139 OF THE UNIFORM CODE OF MILITARY JUSTICE

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 939, 5013, and 5148; E.O. 11476, as reported in 3 CFR, 1969 Comp., p. 132; 32 CFR 700.206 and 700.1202.

SOURCE: 56 FR 42232, Aug. 27, 1991, unless otherwise noted.

NOTE 1: This part 755 is chapter IV of the Manual of the Judge Advocate General of the Navy.

NOTE 2: The Uniform Code of Military Justice (10 U.S.C. 801-940) is referred to in this part 755 as the "UCMJ". The Manual for Courts-Martial, United States, 1984 (E.O. 12473 of August 1, 1984) is referred to in this part 755 as "MCM 1984".

§ 755.1 Statutory authority.

Article 139, UCMJ, redress of injuries to property, is the basis for this chapter.

§ 755.2 Scope.

This chapter provides for assessments against the pay of members of the naval service in satisfaction of claims for property damage caused under certain circumstances. Claims for damage, loss, or destruction of privately owned property caused by a person or persons in the naval service, are payable under Article 139, UCMJ, only if such damage, loss, or destruction is caused by riotous conduct, willful conduct, or acts showing such reckless or wanton disregard of the property rights of others that willful damage or destruction is implied. Acts of the type punishable under Article 109, UCMJ, are cognizable under Article 139, UCMJ. Charges against pay under these regulations shall be made only against the pay of persons shown to have been principal offenders or accessories.

§ 755.3 Claims not cognizable.

The following claims are not cognizable under this chapter.

(a) Claims resulting from simple negligence.

(b) Claims of subrogees.

(c) Claims for personal injury or death.

(d) Claims arising from acts or omissions within the scope of employment of the offender.

(e) Claims for reimbursement for damage, loss, or destruction of Government property.

§ 755.4 Limitation on claims.

(a) *Time limitations.* A claim must be submitted within 90 days of the incident giving rise to it.

(b) *Acts of property owner.* When the acts or omissions of the property owner, his lessee, or agent were a proximate contributing factor to the loss or